

REMARKS

This responds to the Office Action mailed on October 26, 2005. No claims are amended, canceled or added. Thus, claims 1-95 remain pending in this application. Of these 95 pending claims, claims 1-5, 15-72 and 93-95 are currently being examined and claims 6-14 and 73-92 currently stand withdrawn.

Information Disclosure Statement

Applicant submitted Supplemental Information Disclosure Statements and 1449 Forms on March 2, 2004 and November 3, 2004. Applicant notes that six of the references on the first page of 3 were not initialed on the Supplemental Information Disclosure Statement filed on March 2, 2004 and reference 4,396,806 was not initialed on the first page of 12 on the Supplemental Information Disclosure Statement filed on November 3, 2004. Copies of these pages are attached for the Examiner's convenience. Applicant respectfully requests that initialed copies of the 1449 Forms be returned to Applicant's Representatives to indicate that the cited references have been considered by the Examiner.

Applicant submits a Supplemental Information Disclosure Statement and a 1449 Form with this Response. Applicant respectfully requests that an initialed copy of the 1449 Form be returned to Applicant's Representatives to indicate that the cited references have been considered by the Examiner.

§103 Rejection of the Claims

The office action applies ten §103 rejections, and for reasons provided below Applicant respectfully asserts that that these §103 rejections fail to provide a proper *prima facie* case. This response first provides the requirements for a §103 rejection, and then discusses the §103 rejections in view of these requirements and the claim language.

Requirements for a §103 Rejection

MPEP 2143 identifies the requirement for a *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143.03 states: "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)."

According to MPEP 706.02(j), the following should be set forth in a §103 rejection: (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate; (B) the difference or differences in the claim over the applied reference(s); (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter; and (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. Additionally, this section states that it is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply. This is in agreement with 37 CFR §1.104. "The reasons for any adverse action or any objection or requirement will be stated in an Office action and such information or references will be given as may be useful in aiding the applicant . . . to judge the propriety of continuing the prosecution." 37 CFR §1.104(a)(2). "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." 37 CFR §1.104(c)(2).

Should any of these §103 rejections be maintained, Applicant respectfully requests the Examiner to follow MPEP 706.02(j), including applying the language of the claims against the

references to clearly identify the portions of the references relied upon to show all of the claim language. By way of example and not limitation, it is unclear what the Examiner is relying upon to show a programming fitting server in the Knappe reference.

“The factual inquiry whether to combine references must be thorough and searching. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions and cannot be dispensed with.” In re Sang-Su Lee, 277 F.3d 1338, 1343 (Fed. Cir. 2002). “[The] factual question of motivation to combine is material to patentability, and could not be resolved on subjective belief and unknown authority.” Lee, at 1343-44. “The board cannot rely on conclusory statement when dealing with particular combinations of prior art and specific claims, but must set for the rationale on which it relies.” Lee, at 1343.

As identified above, all claim limitations must be taught or suggested. MPEP 2144.03 states, with respect to rejections taking official notice of facts not in the record, “such rejections should be judiciously applied.” Section A of this MPEP section states: “It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” Section B of this MPEP section requires that, if official notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable.

1st §103 Rejection

Claims 1-5, 66 and 68-69 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. (U.S. 6,424,722) in view of Knappe (U.S. 6,061,431). Applicant respectfully traverses.

Applicant finds this rejection to be confusing and contradictory. The rejection states that “Hagen teaches that a mobile wireless communication protocol (see fig. 9, 236, 320) to communicate between a mobile device (320) and a programming hearing aid (see col. 9 line 1 - col. 15 line 37) . . . “and then states “Hagen does not clearly teaches that a mobile wireless communication protocol to communicate between a mobile device and a programming fitting server.” Applicant further asserts that the rejection does not clearly identify the portions of the reference relied upon to show all of the claim language. It is not clear how 236 and 320 show a

wireless communication protocol to communicate between a mobile device and a programming hearing aid, and it is not clear how six columns (e.g. col. 9 line 1 to col. 15 line 37) of the reference are applied to the claim language.

Applicant respectfully submits that the combination of the cited portions of the cited references does not suggest all of the claim language. For example, Applicant is unable to find in either Hagen or Knappe using a mobile wireless communication protocol to communicate between a mobile device and a programming fitting server, as recited in claim 1. Applicant is unable to find, among other things in either Hagen or Knappe, among other things, using a mobile programming a hearing aid system through a mobile device using at least one mobile wireless communication protocol and receiving a distributed application in the mobile device from a programming fitting server through at least one long-range network using the at least one mobile wireless communication protocol and using the distributed application to program a hearing aid in the hearing aid system as recited in claim 4. Applicant is unable to find, among other things in either Hagen or Knappe, among other things, using a mobile “a programming fitting server adapted to store a distributed application and a terminal adapted to program the hearing aid where the terminal is adapted to communicate using a wireless communication protocol to receive the distributed application from the server from a long-range network, and the mobile device is adapted to use the distributed application to interact with the hearing aid, as recited in claim 66.

For example, Hagen illustrates, in FIG. 9, a portable multiprogram unit 320 connected to a host 236 via a cable 314 and a PCMCIA card 300. With respect to Knappe, it is unclear what the rejection considers to be a hearing aid and a programming fitting server used to program the hearing aid. Knappe illustrates, in FIG. 1, a telephone handset 16, an access device 18, a signal processing system 20 and an attribute database 24. The signal processor 20 compensates audio signals according to the compensation attributes downloaded from the attribute database 24.

Additionally, Applicant traverses the recited motivation to combine Hagen and Knappe. The rejection reasons that more convenience can be provided to the user using wireless communication between a mobile device and a programming fitting computer. Applicant respectfully submits this recited motivation is conclusory and not based on objective evidence of record, and further submits that objective evidence has not been provided to identify a

motivation to combine a method for hearing loss compensation in telephony systems based on telephone numbers, and a programmable system for programming hearing aids.

Claims 2-3 depend on claim 1, claim 5 depends on claim 4, and claim 69 depends on claim 68. These dependent claims are believed to be condition for allowance at least for the reasons provided with respect to their independent claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

2nd §103 Rejection

Claims 15-21, 24-26, 30, 32-33, 36, 47-53, 56-58, 64-65 and 94 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. in view of Anderson (U.S. 5,721,783). Applicant respectfully traverses.

Applicant traverses the official notice that it is well known to have a fitting server for networking, and respectfully requests the examiner to provide a reference to support the official notice or an affidavit if based on personal knowledge. Applicant submits that the assertion is not clear and unmistakable, and capable of instant and unquestionable demonstration. Thus, it is improper to not provide a reference (see MPEP 2144.03). Additionally, Applicant submits that the rejection not only improperly takes official notice of networked fitting servers, but also appears to be improperly taking official notice of the relationships to the fitting server, as recited in the claims. These relationships are not capable of instant and unquestionable demonstration from the combination of Anderson and Hagen. In claim 15 a mobile device programs software in the hearing aid, and uses a mobile wireless communication protocol to communicate with the programming fitting server; in claim 36 a mobile device is adapted to program the hearing aid and to use a mobile wireless communication protocol to receive the distributed application from a computer from the long-range network, and in claim 47 a terminal adapted to program software in the hearing aid and to use at least one wireless communication protocol to communicate with a programming fitting server to program the software.

Hagen illustrates, in FIG. 9, a portable multiprogram unit 320 connected to a host 236 via a cable 314 and a PCMCIA card 300. In Anderson, a microphone in the earpiece picks up audio signals, and these audio signals are transmitted to the remote processing unit (RPU) to enhance

the signals (col. 1 lines 50-63). The audio enhancements are performed in the RPU rather than the earpiece, and the RPU is programmed (e.g. claims 28 and 45). Applicant cannot find a showing that the RPU programs software in the earpiece.

Applicant respectfully submits that the combination of references does not suggest all of the claim language. Applicant is unable to find, among other things in the cited portions of either Hagen or Anderson, a mobile device adapted to use a mobile wireless communication protocol to communicate with the programming fitting server and to program software in the hearing aid as recited in independent claim 15. Applicant is unable to find, among other things in either Hagen or Anderson, a mobile device adapted to program the hearing aid where the mobile device is adapted to use a mobile wireless communication protocol to receive the distributed application from a computer from a long-range network and is adapted to use the distributed application to program the hearing aid as recited in independent claim 36. Applicant is unable to find, among other things in either Hagen or Anderson, a terminal adapted to program software in the hearing aid where the terminal is adapted to use at least one wireless communication protocol to communicate with a programming fitting server to program the software as recited in independent claim 47.

Additionally, Applicant traverses the recited motivation to combine the references. After taking official notice that “it is well known to have a fitting server for a networking”, the rejection states “it would have been obvious that Anderson could have a programming fitting server to provide a new and useful auditory aid for hearing impaired persons (see col. 25 line 15 - col. 26 line 53). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Anderson into Hagen to a wireless communication between a mobile device and a programming fitting computer so that more convenience can be provided to the user.” Applicant respectfully disagrees. The recited motivation “that more convenience can be provided to the user” is conclusory and is not based on objective evidence as required by In re Sang-Su Lee. Additionally, the recited motivation is based on an improper official notice.

Claims 16-21, 24-26, 30 and 32-33 depend, either directly or indirectly, on claim 15, claims 48-53, 56-58, 64-65 depend, either directly or indirectly, on claim 47, and claim 94 is

dependent on claim 36. These dependent claims are believed to be condition for allowance at least for the reasons provided with respect to their independent claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

3rd §103 Rejection

Claims 22-23 and 54-55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. as modified by Anderson as claims 15 and 47 above, and further in view of Shennib (U.S. 5,197,332). Applicant respectfully traverses.

The addition of Shennib does not address the deficiencies of the rejection with respect to Hagen and Anderson, as identified above. Claims 22-23 depend indirectly on claim 15, and claims 54-55 depend indirectly on claim 47. These dependent claims are believed to be condition for allowance at least for the reasons provided with respect to their base claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

4th §103 Rejection

Claims 27-29, 31-32, 34-35 and 59-63 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. as modified by Anderson as claims 15 and 47 above, and further in view of Leppisaari et al. (U.S. 6,717,925). Applicant respectfully traverses.

The addition of Shennib does not address the deficiencies of the rejection with respect to Hagen and Anderson, as identified above. Also, Applicant submits that the rejection does not provide a proper motivation to combine Leppisaari, which does not appear to address hearing aid systems, with either Hagen or Anderson.

Claims 27-29, 31-32 and 34-35 depend directly or indirectly on claim 15, and claims 59-63 depend directly or indirectly on claim 47. These dependent claims are believed to be condition for allowance at least for the reasons provided with respect to their base claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

5th §103 Rejection

Claims 37-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. as modified by Anderson as claim 36 above, and further in view of Szymansky (U.S. 6,557,029). Applicant respectfully traverses.

The addition of Szymansky does not address the deficiencies of the rejection with respect to Hagen and Anderson, as identified above. Also, Applicant submits that the rejection does not provide a proper motivation to combine Szymansky, which does not appear to address hearing aid systems, with either Hagen or Anderson.

Claims 37-40 depend directly or indirectly on claim 36. These dependent claims are believed to be condition for allowance at least for the reasons provided with respect to their base claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

6th §103 Rejection

Claims 41 and 71 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. as modified by Anderson as claims 15-16 and 47-48 above, and further in view of Knappe. Applicant respectfully traverses.

The addition of Knappe does not address the deficiencies of the rejection with respect to Hagen and Anderson, as identified above. Claims 41 depends indirectly on claim 15 and claim 71 depends indirectly on claim 47. These dependent claims are believed to be condition for allowance at least for the reasons provided with respect to their base claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

7th §103 Rejection

Claims 43-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. as modified by Anderson as claims 15 and 24 above, and further in view of Fazio (U.S. 6,590,986). Applicant respectfully traverses.

The addition of Fazio does not address the deficiencies of the rejection with respect to Hagen and Anderson, as identified above. Claims 43-46 depend indirectly on claim 15. These dependent claims are believed to be condition for allowance at least for the reasons provided with respect to their base claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

8th §103 Rejection

Claims 42 and 72 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. and Anderson as modified by Leppisaari et al. as applied to claims 15 and 31 above, and further in view of Peters (U.S. 6,601,093). Applicant respectfully traverses.

The addition of Peters does not address the deficiencies of the rejection with respect to Hagen and Anderson and Leppisaari, as identified above. Also, Applicant submits that the rejection does not provide a proper motivation to combine Peters, which does not appear to address hearing aid systems, with either Hagen or Anderson or Leppisaari. Claim 42 depends indirectly on claim 15, and claim 72 depends indirectly on claim 47. These dependent claims are believed to be condition for allowance at least for the reasons provided with respect to their base claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

9th §103 Rejection

Claims 67 and 70 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. as modified by Knappe as applied to claim 66 above, and further in view of Peters. Applicant respectfully traverses.

The addition of Peters does not address the deficiencies of the rejection with respect to Hagen and Knappe, as identified above. Also, Applicant submits that the rejection does not provide a proper motivation to combine Peters, which does not appear to address hearing aid systems, with either Hagen or Knappe. Claims 67 and 70 depend on claim 66. These dependent

claims are believed to be condition for allowance at least for the reasons provided with respect to their base claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

10th §103 Rejection

Claims 93 and 95 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagen et al. as modified by Anderson as claim 36 above, and further in view of Peters.

Applicant respectfully traverses.

The addition of Peters does not address the deficiencies of the rejection with respect to Hagen and Anderson, as identified above. Also, Applicant submits that the rejection does not provide a proper motivation to combine Peters, which does not appear to address hearing aid systems, with either Hagen or Anderson. Claims 93 and 95 depend on claim 36. These dependent claims are believed to be condition for allowance at least for the reasons provided with respect to their base claim.

At least for the reasons provided above, Applicant requests withdrawal of the rejection, and reconsideration and allowance of the claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6960 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 27 day of February, 2006.

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